IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.388 OF 1989

The State of Maharashtra .... Appellant

- Versus -

1. Nicolas @ Tambi S. Babu,
age 23 years, r/o Ambarnath,
Dattakutir, Kalyan,
District: Thane.

2. Raju Murges Subramaniam,
age 25 years, r/o Ambarnath
Dattakutir Zopadpatti, Kalyan,
District: Thane. .... Respondents

Shri B.H. Mehta, Addl. Public Prosecutor, for the Appellant-State.
Shri Niteen Jamdar (Appointed) for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: APRIL 01, 2005

ORAL JUDGMENT (Per P.V.Kakade, J.):

1. This appeal for enhancement is filed by the State against the judgment and order passed by the Judicial Magistrate, F.C. (Railway) Court, Kalyan whereby both the respondents/accused were convicted for commission of the offence punishable under Section 394 r/w Section 34 of the Indian Penal Code and were sentenced to suffer R.I. for four months and to pay fine of Rs.300/- each, in default to undergo S.I. for ten days.

2. The prosecution case is that on 24-2-1988 at about 9:00 p.m. the complainant was travelling in the first class compartment of the local train from Ambernath to Mulund. At that time both the accused persons entered into the first class compartment from the Ambernath station. After sometime the accused came with knife and threatened the complainant and asked him to handover his property to them. The accused No.1 gave knife blows on the face and hand of the complainant, whereas the accused No.2, who was armed with a wooden rod, forcibly snatched Rs.300/- from the complainant and also his wrist watch. Thereafter the accused persons ran away when the train stopped at the next station. The incident was reported by the complainant at the Kalyan railway police station who recorded the complaint and the investigation commenced in which course both the accused persons were arrested and at their instance the property was recovered from one money lender. On

completion of the investigation, charge-sheet was sent to the Court of law.

3. The learned Magistrate framed the charge for the offence against the accused. They pleaded not guilty of the offence and claimed to be tried. Their defence was of total denial. After hearing both the sides and recording their evidence, the trial Court came to the conclusion that the offence was proved and consequently the order of conviction and sentence as aforesaid was passed in the aforesaid manner. As the State was of the view that the punishment imposed against the accused persons was not in consonance with the gravity of the offence, the present appeal came to be filed.

4. We have heard the learned A.P.P. as well as the learned Advocate for the respondents and with their help we have also perused the entire evidence on record.

5. There is no doubt whatsoever that the offence is committed, as alleged, by both the accused. No doubt that the offence punishable under Section 394 is punishable with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and fine. However, at the same time we have to look into the facts and circumstances involved in each case in order to determine whether the sentence awarded is

commensurate with the gravity of the offence committed by the accused while determining the question whether it should be enhanced or not. The evidence on record has no doubt proved that the accused persons have used knife in the commission of the offence and have inflicted injuries on the complainant and have taken away the property i.e. cash amount of Rs.300/- and a wrist watch from the complainant. However, it is also to be noted that the learned trial Judge has taken into account all these aspects while awarding the sentence. In the concluding paragraph of the judgment, the learned Magistrate has given reasons for taking a lenient view when he has recorded that the respondents were too young and the family members were dependent on them and they were already in jail since long and therefore the learned Magistrate thought it fit to take a lenient view and awarded the sentence and fine in the manner as aforesaid against both the respondent.

Therefore, taking into account all these aspects, we are of the view that the order passed by the learned Magistrate cannot be found fault with and hence we hold that the sentence awarded by the learned Magistrate appears to be commensurate with the gravity of the offence revealed from the record and thus no interference is required by this Court in this appeal.

6. Before concluding the judgment, it is to be noted that Shri Niteen Jamdar, the learned Advocate for the respondents, has been appointed in this matter and he has assisted the Court in proper manner and we appreciate his efforts in that regard.

7. In the result, the appeal stands dismissed.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)